



September 24, 2001

Mr. Mark Taylor  
City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

OR2001-4280

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152308.

The City of San Marcos (the "city") received a request for "[a]ny and all documents, including memos, letters, drafts, or e-mail correspondence, . . . regarding the city's efforts to attract the planned \$3 billion [Advanced Micro Devices, Inc] plant." You state that you are making the bulk of the responsive information available to the requestor. You claim, however, that some of the requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.131 of the Government Code provides in relevant part:

...

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code, § 552.131(b), (c). You state that "[t]he City is engaged in preliminary discussions with Advanced Micro Devices, Inc. ("AMD") concerning the development by AMD of a manufacturing facility in or near the City." You further indicate that these discussions have yet to result in an agreement between the city and AMD about incentives that may be offered by the city to AMD related to the development of a manufacturing facility. Based on your representations and our review of the submitted information, we conclude that the submitted information may be withheld under section 552.131(b) of the Government Code. We note, however, that the applicability of section 552.131(b) ends once an agreement is made with the business prospect. Gov't Code § 552.131(b), (c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 152308

Enc: Submitted documents

c: Mr. Erik Rodriguez  
Hayes County Reporter  
*Austin American-Statesman*  
109 E. Hopkins Street, Suite 203  
San Marcos, Texas 78666  
(w/o enclosures)